IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.397 OF 2006
IN
CRIMINAL APPEAL NO.358 OF 2006

Vinayak Mahadev Padelkar .. Applicant

V/s.

The State of Maharashtra .. Respondent

Mr.K.Oommen, advocate for the applicant
Mr.D.P.Adsule, APP for the State

CORAM : J.H.BHATIA, J.

DATE : 20TH APRIL, 2007

P.C.

1. Heard the learned counsel for the applicant and opponent. Perused relevant papers.

2. The applicant was convicted for the offence punishable U/s.120-B and 395 of the I.P.C. and was sentenced to under go R.I.for 10 years and to pay fine of Rs.50,000/- and in default to undergo R.I. for two years on each count. He was further convicted for the offence punishable under Section 342, 506, 201 & 412 of the I.P.C. and was awarded a sentence of imprisonment and fine. He has

preferred Criminal Appeal challenging the conviction and sentence. The appeal is admitted. By this application he seeks to be released on bail pending final hearing and disposal of the appeal.

3. The prosecution case in brief, is that, on 8th May, 2003 about five to six persons entered in the premises of Rajaram Bapu Co-operative Bank Limited, Branch Kukrud. One of them was armed with Revolver and the remaining persons were armed with Knives or Suras. Those persons committed dacoity and took away cash of Rs.13,00,000/- and Gold ornaments weighing 10 Kg. Worth Rs.43,00,000/-. On 13th October, 2003 the present applicant, who was accused No.9, was arrested. According to the prosecution, he was identified as one of the culprits by three witnesses during identificaion parade and he had also made a statement before the police that he had sold one Gold lagad weighing 100 Gram to P.W.31 Mahesh Mulchand Kothari, who is a Gold Smith and on the basis of the information given by him, the said lagad was recovered from Mahesh Mulchand Kothari. Record reveals that none

of the three persons who had identified the present applicant as one of the dacoits, during test identification parade was examined before the Court as a witness. P.W.3 Mahesh Mulchand Kothari did not support the prosecution and was declared hostile. According to him, after arrival of police he melted Gold ornaments of his family members and handed over Gold lagad weighing 100.250 Gram Gold to the police. The panch witness about the information given by the accused and this recovery also did not support the prosecution. It is material to note that the learned 1st Adhoc Additional Sessions Judge convicted the present accused for the offences of dacoity under Section 395 and conspiracy under Section 120-B as well as under Section 412 of the Cr.P.C. It indicates that the 1st Adhoc Additional Sessions Judge was not clear whether the present applicant had committed dacoity or he was receiver of the property taken away in the dacoity. The applicant is in custody since 13th October, 2003. Taking into consideration the above circumstances I find that it is a fit case to grant bail to the present applicant.

4. The learned counsel for the applicant contends that the trial Court has imposed a heavy fine on different counts and being a poor. The applicant is in jail for a long period. Therefore, he will be unable to pay fine amount. Hence, I pass the following order.

O R D E R

A. The applicant Vinayak Mahadev Padelkar be released on his executing P.R.Bond of Rs.25,000/- with one or more surety in like amount with a condition that he shall report in the office of L.C.B., Thane once in a month, as he is R/o.Vitthalwadi, District Thane, till disposal of the appeal.

(**J.H.BHATIA, J.**)